

January 8, 2015

Mr. Ben Larson  
U.S. Environmental Protection Agency  
William Jefferson Clinton Building – North  
Mail Code 6405A, Room 6520W,  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Re: ***HOUSTON REFINING LP (EPA ID # 4045) (the “Company”) Public Comments - Request for Substantiations of Claims of Confidential Business Information from Businesses that have Submitted Reports and Transactional Information under the Renewable Fuel Standard Program, Docket ID: EPA\_FRDOC\_0001-16637***

Dear Mr. Larson:

Houston Refining LP (hereafter “Houston Refining” or “Company”) hereby responds to the Federal Register Notice<sup>1</sup> issued by the U.S. Environmental Protection Agency (“EPA”) associated with the above-referenced Docket, which concerns a Freedom of Information Act (“FOIA”) request for information submitted by regulated parties since the year 2011 under the Renewable Fuel Standard regulations, 40 C.F.R. Part 80, Subpart M (“RFS”). The Federal Register Notice identifies the following information sought under this FOIA request:

- 1) Annual Compliance Reports submitted by regulated parties from 2011 through November 2014;
- 2) Information concerning parties’ ownership of Renewable Identification Numbers (“RINs”) generated in 2012 and 2013; and
- 3) Data from the EPA Moderated Transaction System (“EMTS”) and associated reports submitted by parties concerning RIN trades, generation, separation, and retirement.

For the sake of simplicity, when referring collectively to the data and information requested, we refer to the same as Houston Refining’s or the Company’s “RIN Information and Reports.”

To the extent applicable to the Company, we previously asserted confidential business information (“CBI”) protection from disclosure for the RIN Information and Reports sought under this FOIA request, as well as all other data, documents and information submitted to the EPA pursuant to the RFS regulations. By this letter, Houston Refining hereby re-asserts CBI protection for all RIN Information and Reports sought under this FOIA request, as well as the other data, documents and information submitted to the EPA. Accordingly, we respectfully request that EPA deny the FOIA request as it relates to the Company.

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<sup>1</sup> 79 Fed. Reg. 73577 (Dec. 11, 2014)

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As requested, the Company is providing additional information concerning the highly sensitive and commercially material nature of the requested information, and substantiates its assertion of CBI protection. Below follows a series of responses corresponding with questions posed in the Federal Register Notice.

While we have attempted to respond to each point applicable to the Company's RIN Information and Reports, we note that certain aspects of the data, documents and/or information that would be disclosed by the EPA pursuant to this FOIA request are unclear. Accordingly, the Company reserves the right to assert lack of notice or other due process claims in connection with this matter. We further reserve the right to amend and/or supplement our responses, as needed or in connection with any subsequent action taken by EPA regarding this matter.

Please do not hesitate to contact me with any questions at [steven.cook@lyb.com](mailto:steven.cook@lyb.com) or 713-309-4629.

Respectfully submitted,



Steven D. Cook  
Global HSE Counsel

/jbw

enc. – Response to CBI Substantiation Questions

*E-mail copy to: [larson.ben@epa.gov](mailto:larson.ben@epa.gov)*

**Houston Refining LP**  
PUBLIC COMMENTS CONCERNING RFS FOIA REQUEST,  
DOCKET ID: EPA\_FRDOC\_0001-16637  
RESPONSE TO CBI SUBSTANTIATION QUESTIONS

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

**RESPONSE:** *The Company requests that the information be maintained as confidential permanently.*

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?

**RESPONSE:** *As discussed further in our response to item #7 below, the Company's RIN Information and Reports represent highly sensitive and commercially material information. If released, such data would provide our competitors with direct access to information that is not otherwise publicly available. The Company's RIN Information and Reports represent year-over-year activity; thus, data and information for 2011 and later would provide a competitor with key insights into the Company's present-day business engagements and strategies. Accordingly, we assert that this information will not become stale over time, and request permanent protection from FOIA disclosure.*

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information be considered confidential?

**RESPONSE:** *The Company maintains all data and information related to its RIN Information and Reports consistent with industry practices for safeguarding confidential data. These measures include:*

- *password-encrypted access to the Company's computer network and servers*
- *moderated access to internal e-mail distribution lists*
- *industry-standard antivirus and firewall software*
- *monitoring of access to physical records stored at the Company's offices*
- *confidentiality provisions in employee contracts and handbooks*
- *confidentiality provisions in product purchase/sale agreements, broker agreements or non-*



*disclosure agreements.*

*The Company has not made the data or information contained in its RIN Information and Reports available to any third party other than the EPA or, in partial form, to third parties which have agreed to be subject to a duty of confidentiality.*

4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? If so, specify which.

**RESPONSE:** *The Company does not make the specific data or information contained in its RIN Information and Reports publicly available on the Internet, on public databases, in articles or promotional materials, or otherwise to the general public.*

*The Company files annual reports to its shareholders; however, the information contained therein is of a much more generalized and aggregated nature than the highly specific, detailed data contained in the RIN Information and Reports submitted to the EPA.*

5. Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

**RESPONSE:** *While some individual pieces of RIN-related information may be accessible through other government-mandated submissions, the Company is not aware of any means by which a member of the public could gain access to the complete set of information contained in the RIN Information and Reports. This information is not of a kind that the Company would customarily release to the public.*

6. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

**RESPONSE:** *The Company is not aware of any government body previously making a determination as to the confidentiality of the requested information.*

7. For each item or category of information claimed as confidential, *explain with specificity* why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?

**RESPONSE:** *While the requesting party in this case is a law firm, and not necessarily a competitor of the Company, the Company has no idea how the requester intends to use the wide-ranging information that it seeks or how to assess whether disclosure would serve a compelling public interest. The requester may represent one or more of our competitors, and is not bound by a duty*

*to maintain the confidentiality of our data and information once it is received. Furthermore, the Company asserts the confidentiality of our RIN Information and Reports, and all other data, documents and information submitted to the EPA pursuant to the RFS regulations, not just for present purposes but also in order to preserve our right to do so in the seemingly likely event of similar future requests.*

*The above referenced FOIA request seeks information related to the Company's Annual Compliance Reports since 2011. These Reports include details on activities that incur or are otherwise related to a Renewable Volume Obligation ("RVO") imposed on the Company under the RFS regulations. This includes the total amount of gasoline and diesel produced or imported, and the Company's corresponding RVOs (which could easily be reverse-calculated to determine each of the aforementioned fuel volumes). The Company closely safeguards this information, which if released would provide competitors and counterparties with a variety of significant insights into the Company, including our economic interests and positions in the U.S., our business strategies and trends, and our demand for RINs and costs of compliance. Armed with this confidential information, the Company's counterparties would wield a significant advantage over the Company in a variety of negotiating contexts, such as product and RIN purchase/sale contracts, storage agreements, and transportation arrangements. In each such case, the Company's counterparty would enjoy insight into the commercial and compliance demands driving the Company's decision-making. In addition, the Company's competitors could take advantage of the Company's data to better understand the markets that the Company serves, which would create a disincentive for the Company's continued business in these areas. For these reasons, the Company contends that the release of its Annual Compliance Reports and all information contained therein would cause the Company both direct and indirect substantial harm.*

*The above referenced FOIA request also seeks information related to the Company's retirement of RINs since 2011. Information concerning the retirement of RINs could provide insight into the Company's activities that incur an RVO. As with our Annual Compliance Reports, the Company closely safeguards this information. RINs may also be retired for other reasons that we wish to maintain as confidential. For example, RINs retired under Retire Reason Code "Fuel used or designated to be used in any application that is not transportation fuel, heating oil, or jet fuel" would provide a competitor with information on the types of markets to which we sell renewable fuel. The Company does not believe that any information concerning RIN retirement since 2011 should be disclosed, and particularly strongly object to the disclosure of the quantity and type of RINs retired and the Retire Reason Code.*

*The above referenced FOIA request also seeks information related to the Company's generation of RINs since 2011. The information sought includes details on the quantity and type of renewable fuel and RINs (Fuel Code/"D" code), production process, and the feedstock type and quantity. This information – and all other information related to RIN generation that is sought by the requester – is highly sensitive. If released, it would provide competitors and counterparties with a variety of significant insights into the Company, including our RIN generation ability and rates, our preferred feedstocks, and our business strategies and trends. Competitors and counterparties could directly leverage this information to compromise our commercial positions in either direct negotiations or when negotiating with our suppliers. For*

*these reasons, the Company contends that the release of its RIN generation reports and any related data would cause the Company both direct and indirect substantial harm.*

*The above referenced FOIA request also seeks information related to the Company's trades involving RINs and the separation of RINs. The transactional information sought by the requester includes details on the quantity and type of renewable fuel and RINs (Fuel Code/"D" code), the price per gallon and/or price per RIN, and transaction partner names and ID numbers. This information – and all other information related to RIN transactions that is sought by the requester – is highly sensitive. If released, it would provide competitors and counterparties with a variety of significant insights into the Company, including our RIN buying and/or selling strategies, our regular counterparties, our ability to maximize revenues for RINs, and our RIN-related business trends. With this information, competitors or other third parties could develop strategies to frustrate the Company's efforts or increase the cost of implementing the chosen strategy.*

*Additionally, the Company protects this information by including in our RIN trade contracts confidentiality provisions. Should EPA notify the Company that it will release this information, the Company may have to contact each counterparty. Given the significant number of RIN transactions that have occurred since 2011, it would be extremely burdensome to notify all of our counterparties affected by this request. RIN separation details, meanwhile, represent sensitive information insofar as they may serve as a proxy for the type and quantity of RINs that the Company has acquired since 2011. By virtue of the Company's status as an Obligated Party/Renewable Fuel Blender/Renewable Fuel Exporter, we have separated a material quantity of RINs. The Company believes this information should be treated as CBI for many of the same reasons previously stated regarding the disclosure of RIN trade information. For these reasons, the Company contends that the release of its RIN trade and separation information and data would cause the Company both direct and indirect substantial harm.*

*Lastly, the above referenced FOIA request seeks information related to the Company's ownership of RINs in 2012 and 2013. It is unclear as to the precise form in which this information would be disclosed to the FOIA requester. Regardless, the Company's RIN ownership data – as included in its quarterly RIN Activity Reports or as otherwise maintained in EMTS – represents highly sensitive commercial information. For example, our RIN Activity Reports identify the volume of renewable fuel owned at the end of each quarter, and the quantity of prior-year and current-year vintage RINs purchased, sold, separated, and retired each quarter. This information should be maintained as confidential for many of the same reasons previously stated in this Response #7. Furthermore, the mere ownership of RINs at the end of each quarter and/or year by itself represents a wealth of information that a competitor could use to our disadvantage. Historic RIN ownership quantities may provide insight into the Company's present-day RIN generation activity and RIN buying/selling patterns, the quantity of RINs needed to satisfy an RVO, and our Company's overall regulated activities under the RFS. For these reasons, the Company contends that the release of its RIN Activity Reports and any other RIN ownership data would cause the Company both direct and indirect substantial harm.*

8. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If you assert that the information is voluntarily submitted information, please explain whether the information is the kind that would customarily not be released to the public.

**RESPONSE:** *All information within the scope of the FOIA request is submitted to EPA on a mandatory basis, as required under the RFS regulations.*

9. Whether you assert the information as voluntary or involuntary, please address why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

**RESPONSE:** *The Company will continue to comply with its mandatory reporting obligations under the RFS regulations, regardless of EPA's confidential business information determination in this case.*

10. If you believe any information to be a trade secret, please so state and explain the reason for your belief. Please attach copies of those pages containing such information with brackets around the text that you claim to be a trade secret.

**RESPONSE:** *The information requested is not a "trade secret", within the generally accepted meaning of that term.*

11. Explain any other issue you deem relevant (including, if pertinent, reasons why you believe that the information you claim to be CBI is not emission data or effluent data).

**RESPONSE:** *The Company's RIN Information and Reports are neither emissions data nor effluent data, as such terms are defined at 40 C.F.R. §§ 2.301 and 2.302, respectively. The requested information does not provide information as to actual emissions to the environment, either through the air or water. It is commercial business information, which if made public, will put the Company at a competitive disadvantage with its counterparties.*

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